

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO.1870 OF 2007

Shri Sugrивnath Ramlakhan Pandey Petitioner
Vs.
Shri Deepak Gajul & 3 Ors. Respondents

Shri S.R. Chitnis, Senior Counsel, with
Ms V.R. Raje, Advocate, for the Petitioner.

Ms Usha V. Kejariwal, APP, for the Respondent
Nos.1 to 4.

CORAM: R.M.S. KHANDEPARKAR &
Smt. V.K. TAHILRAMANI, JJ.

DATED: OCTOBER 16, 2007

P.C:

1. Heard at length the learned senior counsel for the petitioner. By the present petition, the petitioner is seeking writ of mandamus against the respondents for quashing the notice dated 18-9-2007, issued by the respondent No.1 in chapter proceedings, as also seeking declaration of his arrest under Section 151 of the Criminal Procedure Code, hereinafter called as "the Code" to be illegal and, therefore, compensation of Rs.1,00,000/-.

2. The order in relation to the chapter proceedings, which is Exhibit-A to the petition, apparently discloses that the concerned Magistrate, after having taken into consideration the materials placed before him pertaining

to the alleged illegal activities on the part of the petitioner and after taking into consideration that the conduct of the petitioner is sufficient to disclose the possibility of commission of serious offence which could lead to breach of peace in the locality, has issued the said order. Though it is sought to be contended on behalf of the petitioner that the order nowhere discloses any reason for demanding the interim bond seems to have been recorded separately, the order itself discloses such reasons having been recorded before arriving at the conclusion about the need for execution of interim bond by the petitioner. There is sufficient compliance of Section 116(3) of the Code in that regard and we do not find any lapse on the part of the concerned Magistrate in the matter of compliance of the said provision of law and particularly, regarding the need for recording the reasons for asking the petitioner to execute interim bond to maintain peace.

3. As regards the contention about the alleged illegality in the arrest and detention of the petitioner for a period beyond the period for which a person can be detained in custody on being arrested in terms of Section 151 of the Code, we have perused the station diary entries and we find that the petitioner was taken into custody on the apprehension that there was likelihood of commission of cognizable offence by the

petitioner. However, before the expiry of the period of 24 hours from the time of his arrest, he was released and meantime the chapter proceedings were sought to be initiated and necessary interim bond was called upon to be executed by the petitioner and was accordingly executed. Being so, we find no illegality as regards his arrest nor any violation as such of Section 151 of the Code.

4. Attention was sought to be drawn to the decision of the Division Bench of this Court in the matter of **Bhimrao Ashruji Mhaske v. The State of Maharashtra and another**, reported in 1990 (3) Bom.C.R. 671, in **Rajesh s/o Suryabhan Nayak v. State of Maharashtra & Ors.**, reported in 2006 All M.R. (Cri.) 1861, of the learned single Judge of the Delhi High Court in **Balraj Madhok v. The Union of India through its Secretary, Ministry of Home Affairs, New Delhi and another**, reported in AIR 1967 Delhi 31, and another also of the Delhi High Court in the matter **Jagdish Ch. Bhatia v. State**, reported in 1983 Rajdhani Law Reporter 547.

5. As far as the decision of the Division Bench of this Court in **Bhimrao Mhaske's** case (supra) is concerned, it is on the point of scope of Section 151 as has been made applicable to the State of Maharashtra whereas the decision in **Rajesh Nayak's** case (supra) is concerned, it

is on the point of need for due compliance of the mandate of Section 116(3) of the Code before requiring the person against whom the chapter proceedings are initiated to execute interim bond. As far as the provision of law comprised under Section 151 of the Code is concerned, as already seen above, there is no case for detention for more than 24 hours and hence the decision in the matter of Bhimrao Mhaske's case is of no help to the petitioner for interference by this Court in the case in hand. Undisputedly, the records nowhere disclose detention of the petitioner for more than 24 hours after he was arrested. The arrest of the petitioner was around 6:30 p.m. on 17-9-007 and he was released at 6:25 p.m. on 18-9-2007.

6. As regards the decision in Rajesh Nayak's case is concerned, that was a case wherein the Executive Magistrate of Kotwali Division had with him the printed forms regarding the orders requiring the persons against whom chapter proceedings are initiated to demand execution of interim bond and there was total absence of application of mind by the concerned Magistrate before requiring such persons against whom chapter proceedings were initiated to order them to execute interim bonds. It was clearly observed in the said decision that:

"The fact that the police report

indicated that the members of the opposite-party were likely to create breach of the peace is not sufficient to pass an order and it cannot be said that the Magistrate has given a careful consideration to the existence of a case of emergency when he merely relies on a police report without even calling the police officer to the witness box.

In the case in hand, plain reading of the relevant order not only discloses consideration of all the materials placed before the concerned Magistrate but also the facts disclosed therefrom and the need for execution of interim bond by the petitioner. Apparently, the decision in Rajesh Nayak's case is of no help to the petitioner in the case in hand.

7. As far as the decision of the Delhi High Court in **Balraj Madhok's** case (supra) is concerned, it is on the point that the police cannot proceed to arrest a person on the fanciful apprehension that such person is likely to commit cognizable offence but there must be material which could help the concerned police officer to have a reasonable belief that the person concerned would commit cognizable offence. Similar is the decision in the matter of **Jagdish Bhatia** (supra). In the case in hand,

the station diary apparently discloses application of mind by the concerned police officer for need of the arrest of the petitioner on the ground that there was likelihood of commission of serious cognizable offence by the petitioner and, therefore, these decisions are also of no help to the petitioner. Besides, the respondents themselves in their affidavit have stated that there are no proceedings as such under Section 151 nor there is any show cause notice issued under Section 151 of the Code.

8. In the result, therefore, we do not find any case having been made out for interference in writ jurisdiction in exercise of power under Article 226 of the Constitution. The petition, therefore, fails and is rejected.

(Smt.V.K.Tahilramani, J.)

(R.M.S.Khandeparkar, J.)

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